

# THE COMPLIANCE WATCH

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## UCS POV

### Deriving Per Day Wages for Deduction of Wages or Any Other Benefit Calculations

**Shajju Mathew, Chief Operating Officer**

Across industries there is often ambiguity on determining the daily rate of wages for persons employed on monthly wages to calculate overtime wages, deduction of pay for absent days, leave encashment, and so on. The method of calculation for the above-mentioned aspects is not explicitly prescribed under the Labour Laws except under The Payment of Gratuity Act. As explained in Sec. 4(2) of the Gratuity Act, 'The day's wages shall be calculated by dividing the monthly wages by 26 days.' This is supported by various case laws and also some state minimum wage notifications. For workers who receive daily earnings, there is no cause for concern, but for those hired on a monthly salary, the interpretation that follows may be pertinent

According to Sec.13 & 14 of The Minimum Wages Act and The Shops & Establishment Act:

- (1) The days of work in a month is constituted by 26 days
- (2) The days of work in a week is constituted by 6 days
- (3) Hours of work in a day are constituted by 8 hours

Those who are employed on monthly wages will receive wages for the work done for 26 days and are entitled to four weekly off days. The overtime rates of wages prescribed under these Acts clearly state that the employee shall be eligible for overtime for any additional hours of work at the rate equivalent to the daily average wages for the days worked. Therefore, a day's wages should mean the result obtained by dividing the monthly wages by the actual number of working days (i.e., 26 days). The same mode of calculation is prescribed under the Shops and Establishment Act for pay during the leave days. The employee shall be eligible for leaves with wages at the rate equivalent to the daily average of one's wages for the days worked during the month. There are a few case laws that confirm that the daily wages are to be arrived by dividing monthly wages by 26 days to determine the overtime wages (P. Radhakrishnan Nair Vs. K.S.R.T.C, 1983(Lab IC 276 Ker. HC), K. S Verma Vs. M.P.S.R.TC 1979, Lab IC 107 LLR 150 (M.P HC).



However, the above method of calculation might not be appropriate when deducting wages from employees for missed work days. As per Sec.7 of The Payment of Wages Act, deduction of wages for the days of absence can be made as per the salary fixed for the employees. For the purpose of wage deduction, the said Act does not prescribe calculating the day's wages as per the actual number of days the employee worked. The same has been clarified in the State Minimum Wages notification for a few of the states such as Haryana, Himachal Pradesh, etc. where it states that, for deduction of wages for the absent days, the monthly wages are to be divided by 30/31 days.

In view of the above provisions given for calculating overtime wages, pay for leave, holidays, gratuity, and so on, the day's wages shall be considered by dividing the monthly wages by 26 days. For deduction, it is advisable to divide the monthly wages by 30/31 days for absent days considering the various state minimum wage notifications. Please note, the arrival of LOP base days is not expressed but implied as mentioned above on the arrival of earnings and deduction component based on the number of days.

## Centre Clears 8.15% Interest Rate On Employees Provident Fund For 2022-23

The government has ratified the rate of interest at 8.15 per cent rate on deposits under the Employees Provident Fund scheme for the financial year 2022-23. Retirement fund body EPFO on March 28, 2023, had marginally raised the interest rate on employees' provident fund (EPF) deposits to 8.15 per cent for 2022-23 for its over six crore subscribers.

As per an official order issued recently, the EPFO has asked the field offices for crediting the interest at 8.15 per cent on EPF for 2022-23 into the accounts of members. The order came after the finance ministry's concurrence to the EPF rate of interest approved by EPFO trustees earlier in March this year.

Now the EPFO field offices will start the process of crediting the interest into subscribers' accounts.

In March 2022, Employees' Provident Fund Organisation (EPFO) had reduced the interest rate on EPF deposits for 2021-22 to a four-decade low of 8.10 per cent from 8.5 per cent in 2020-21. This was the lowest since 1977-78, when the EPF interest rate stood at 8 per cent.

**Source : NDTV**

## Protection of Interests of Employees Through Outsourcing Agencies

The Government posts are filled up in accordance with the recruitment rules. However, keeping in view the administrative exigency of work and unavoidable circumstances, outsourcing for services through contract is also sometimes resorted to. There are detailed procedures laid down for procurement of such non-consulting or outsourced services, including through e-procurement, in the "General Financial Rules, 2017 (GFR 2017), and the "Manual for Procurement of Consultancy & Other Services, 2017".



Statutory and contractual obligations to be complied with in respect of the outsourced employees engaged for provision of services to Government are governed by the applicable Labour Laws such as Contract Labour (Regulation and Abolition) Act, 1970, Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Equal Remuneration Act, 1976, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Child and Adolescent Labour (P&R) Act, 1986 and Maternity Benefit Act, 1961 etc.

Protection of the interests of contractors' employees under these laws, is enforced by the Government through the Office of Chief Labour Commissioner (Central) [CLC(C)] for Central Sphere. The CLC(C) carries out inspections for the purpose, so as to regulate the employment of contract labour, payment of minimum wages, welfare, etc of employees engaged by the contractors for providing service.

**Source : Press Information Bureau**

## 93% of the informal employees in India willing to trade-off higher salary for social security, healthcare benefits:

An increasing number of India's informal workforce, particularly the Gen Z employees, are looking beyond wage rates when assessing professional opportunities with rising expectation about social security and healthcare benefits, according to a study by Qess, a leading staffing company and business services provider.

The study - based on interviews with over 4000 respondents of all ages across seven metros and seven non-metros conducted between September 2022 and January 2023 - shows that about 93% of the informal employees claim that if an employer offered them a job with health benefits and formal agreement as opposed to a higher salary without a contract they would take it. The study shows that 97% of the informally employed workers agree that they have a better chance of improving their lifestyle and that of their family with a formal job as opposed to one without a contract. The inclination towards a formal job contract is highest among the Gen Z (95%), according to the 'New Collar Generation Report' which looks at the aspirations of India's informal economy post-pandemic.

The report reveals that a majority of workers in India are still without any social security coverage, and their aspirations to move into an inclusive, secure lifestyle are taking shape. "An increasing number of India's informal workforce is realising the advantages of a job with a formal contract and have career aspirations not very different from the formal cohort of workers," said Lohit Bhatia, President of Workforce Management, Qess Corp, in an interaction with ET.

As per the report, 'New Collar' defines a generation of workers whose priorities and aspirations are converging with those of formal employees, and who value security and benefits over their daily wages. Informal workers are defined as the ones who do not have formal contracts, may or may not have financial inclusion and have no social security benefits from their employer.



"The trend is seen more among the workers in the 18-25 years cohort who have a greater awareness about the benefits of formal employment due to their greater exposure to the world through the internet and mobile. That apart, the informal workers increasingly feel that there is more prestige attached to formal employment," said Bhatia. Besides, the Covid period also showed the extent to which organisations are ready to go to take care of their formal workforce, he added.

According to the study, 80% of the informal employees expect their employers to provide them with the security of ESI (Employee State Insurance) and other medical benefits. The expectation of ESI is even higher for the younger, informal employees (83% - 18 to 25 years and 81% - 26 to 35 years). About 79% of respondents claim they would compromise on 20% or more of their salary if it provided security and benefits equivalent to their formal counterparts (78%). "Technology has played an important role in educating workers about the benefits of formal employment," said Bhatia. About 84% of the informal respondents agree that technology has helped create more awareness about the advantages of formal employment. "As digital natives, informal employees aged between 18 to 35 have more confidence in the awareness technology has brought than their older counterparts," said Bhatia.

The survey shows that while the top job objective associated with work remains money and making a living for the majority of informal employees (51%), this only marginally exceeds those who associate it with other factors (49%). The study shows that the younger workers in India are driving this trend. For more than half of those between 26 to 35 (53%) and between 18 to 25 (54%) the top objective of a job is not just to earn money but the things such as social security benefits, healthcare benefits, and learning new skills at work.

**Source : Economic Times**

## Gig workers demand model law, labour rights, social security

The National Coordination Committee on Gig Workers (NCCGW), an umbrella organisation of several unions working among gig and platform workers, on July 27 protested in front of Parliament and demanded the Centre for a model law for the sector so that these workers get social and job security. In their demand charter submitted to Union Labour Minister Bhupender Yadav, the NCCGW said about 12 million gig and platform workers are facing systematic exploitation, wage theft, illegal termination, mental torture and unfair labour practices at the hands of digital platforms. “These issues became unbearably severe during and after the COVID-19 pandemic, while we were providing essential services day in and day out to the country, at a great personal cost,” they said in the charter.

They said the platforms do not recognise them as employees, yet they control every aspect of their work and exploit them without any accountability or proper redressal mechanisms, benefits or minimum wages. Women gig workers, who are a sizeable part of the gig and platform workforce, face even more compounded issues, such as lack of access to toilets, discrimination against working mothers, and harassment and violence from customers,” the memorandum said. “We demand to be recognised as workers,” they said adding that there is no pay transparency from platforms, nor any minimum guaranteed income. “They bleed money from us through credits, commissions, subscriptions, loans, penalties and fees, while we bear all the costs of products, maintenance, travel, and paperwork,” the memorandum said.



Platforms use black-box AI systems to deploy opaque employment decisions, such as changing the minimum cut-off rating resulting in mass terminations, they alleged. “They then avoid accountability for these decisions, pushing the blame on to the AI algorithms. We demand that all employment decisions and changes are explained to us and notified to us in advance. We demand that the humans within the platforms take responsibility for any adverse and unfair system changes,” they told Mr. Yadav.

They also demanded that as workers are constantly under surveillance, their data must be made easily available to them at all times and at any time. “We demand the guarantee of basic benefits such as ESIC and PF as a large proportion of gig workers are working full-time for platforms and rely solely on them for livelihood,” they added.

Platform companies are arbitrarily and unfairly terminating a large number of gig workers without adequate reasons, while continuously recruiting new gig workers, the memorandum added and said every platform must set up a tripartite committee consisting of representation from gig workers, platform employers as well as government functionaries. “This board will identify and raise emerging issues on behalf of gig workers, and ensure that they are resolved in a fair manner,” they said.

**Source : The Hindu**

## Kerala mulling law to make registration of migrant workers compulsory, says Minister

The State government is mulling a legislation to make registration of migrant workers mandatory, Minister for Labour V. Sivankutty has said.

At present, the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 is relied upon for registration purposes. Any migrant worker reaching the State should be registered. The Labour department will make necessary arrangements for it, a statement quoting the Minister said recently.

At present, over 5 lakh migrant workers have registered under the Awaz health insurance scheme. Awaz insurance card had been arranged for those who registered under the scheme. Steps would be taken by the Labour department to identify migrant workers and get them to register under it.

At present, only if five or more contract workers are employed through a contractor do they have to be registered at the labour office. This should be changed so that each migrant worker is registered.

It would also be examined if police clearance certificate for the migrant workers from their home States can be made mandatory, the statement said.

Atithi App on which the migrant workers can register and which would have comprehensive details about them would be launched next month. Widespread promotions about the app would be held. Labour department officials would visit labour camps and workplaces and register every migrant worker on the Atithi App, Mr. Sivankutty said.

Source : The Hindu



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